

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO:

SUSAN BOTELLO & CHRISTOPHER BOTELLO,
Plaintiffs,

v.

J. TIMOTHY NEALON, NEALON AND NEALON,
MICHAEL C. FEE, JOAN BOTELLO, BARBARA BOTELLO,
STEPHEN BOTELLO, MANDY RUSSELL, JAMES GATELY, & JEAN ETHRIDGE.
Defendants.

COMPLAINT

This is a complaint filed by three children of the late Paul R. Botello seeking damages for the intentional tortious conduct of the defendants, conspiracy, breach of fiduciary duty, and for fraud. The defendants are all participants of varying degrees in an illegal scheme to transfer wealth from Paul Botello and Botello Lumber Company for their own benefits and to the detriment of the plaintiffs.

PARTIES

1. The plaintiff Susan Botello is a resident of Sandwich, County of Barnstable, Massachusetts.
2. The plaintiff Christopher Botello is a resident of Hingham, County of Plymouth, Massachusetts.
3. The defendants, Barbara Botello, Mandy Russell, and James Gately are residents of Hyannis, County of Barnstable, Massachusetts.
4. Barbara (Russell) Botello is the second wife of the decedent and of no blood relation to the plaintiffs.
5. Mandy Russell is the daughter of Barbara (Russell) Botello.



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6. James Gately is the boyfriend of Mandy Russell.
7. Mandy Russell and James Gately are record owners of 95 Forest Hills Road, Cotuit, MA as joint tenants.
8. Toby Russell is a resident of New York County in New York City and son of Barbara Botello.
9. J. Timothy Nealon (Tim Nealon) was the estate drafting attorney for Paul Botello.
10. Tim Nealon also represented Barbara Botello, Stephen Botello, and Botello Lumber Corporation including its affiliated entities.
11. Nealon and Nealon is the law firm where Tim Nealon is employed.
12. Michael C. Fee has an address of 15 Francis Farm Road, Truro, MA and was the attorney for the late Paul Botello, and is the current attorney for Stephen Botello, Botello Lumber and its affiliated entities.
13. Jean Ethridge is the CFO of Botello Lumber and the person in charge of business documents.
14. The plaintiffs are the biological children of the late Paul R. Botello.
15. Stephen Botello is a biological son of Paul Botello and a director of Botello Lumber Co., Inc. and Paul R. Botello, Inc.

COUNT I

TORTIOUS INTERFERENCE WITH INHERITANCE

16. From about January, 2006 to the time of the death of the plaintiffs' father, the defendants, Barbara Botello, Stephen Botello, Mandy Russell and Joan Botello, fraudulently represented to Paul Botello that the plaintiffs were going to put him in a nursing home, steal all of his money, and sell his lumberyard.



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17. This was done so that the defendants could control him and his financial and business affairs.
18. J. Timothy Nealon and Michael C. Fee, were aware of this fraudulent scheme and did nothing to prevent it from continuing, even though they had knowledge that it was untrue and benefitted from the same.
19. In August of 2006, while plaintiffs' father was in the hospital recovering from his massive stroke, Barbara Russell stated to plaintiffs' father that the only way to prevent his children from putting him in a nursing home, stealing all of his money, and selling his lumberyard, was to marry her.
20. While plaintiffs' father was still in the hospital recovering, Barbara Russell, Stephen Botello and Joan Botello contacted Paul Botello's sister Patti Hanson and falsely represented to Patti that Paul's children were going to put him in a nursing home, steal all of his money, and sell his lumberyard.
21. Barbara and Joan asked for Patti's help in preventing this because she was closest to Paul and Paul would listen to her. Further, that convincing Paul to marry Barbara was the only way to protect Paul from his children and that Barbara would take care of Paul through all of his health issues if they were married.
22. Patti then called Stephen Botello who confirmed the story of Barbara and Joan.
23. Based on the misrepresentations of the defendants, Patti Hanson flew from Texas to see her brother Paul and did convince him to marry Barbara Russell.
24. At the time the defendant made the representations described herein, Paul Botello was recovering from a massive stroke and suffering from diminished capacity due to multifocal health issues as well as dementia.



25. Barbara Botello and Stephen Botello were in a fiduciary relationship with plaintiffs' father and plaintiffs' father was forced to become dependent on Barbara Botello and Stephen Botello for his care, well-being and the handling his financial matters.
26. As a result of said relationships, the plaintiffs' father placed his complete trust and confidence in the advice given to him by Barbara Botello and Stephen Botello with regard to his estate plan and financial matters, and fully relied on their representations.
27. Jean Ethridge, Barbara Botello, Joan Botello and Stephen Botello knew that her representations were false and intended to deceive plaintiffs' father and have him act thereon by marrying her and executing a new estate plan which would completely exclude the plaintiffs from any devise or bequest.
28. Jean Ethridge, Joan Botello, Barbara Botello, Stephen Botello, J. Timothy Nealon and Mandy Russell continued to reinforce these false representations until the time of Paul Botello's death by restricting the plaintiffs' from visiting and communicating with their father, preventing access to his medical status, removing pictures of plaintiffs and their children from his home and room, preventing any grandchildren except for Mia Russell from seeing Paul, as well as hiding the fact Paul Botello was suffering from dementia, among other things.
29. The plaintiffs' father relied on the false representations, actions, and omissions of Barbara Botello, Joan Botello, Mandy Russell and Stephen Botello, and when Paul died, his 2011 last will and testament and pour over trust contained no provision whatsoever for a devise or bequest to his children and specifically disinherited them.



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30. As a result of the false and fraudulent misrepresentations, actions and omissions that defendants made to plaintiffs' father, and the malicious interference by defendants, the plaintiffs sustained losses and damages, and the defendants were unjustly enriched.
31. Specifically, in 2014, certain real property 95 Forest Hills Road, Cotuit, was transferred by Barbara Botello to Mandy Russell and James Gately for no consideration, which was held individually by Paul Botello and would have been included in his estate.
32. At the time of the transfer, Paul Botello was suffering from dementia and in a nursing home, in frail health and not of sound mind.
33. Additionally, shortly before his stroke, Paul sold his home in Baxter Neck Road for three million dollars and moved into the home he had built at 134 Bayshore Rd. in Hyannis.
34. At this time Paul placed the home at 134 Bayshore Road in a realty trust with his children as the beneficiaries. J. Timothy Nealon prepared the documents for this transfer.
35. 17 days after marrying Paul and while Paul was still suffering from diminished capacity due to his massive vascular hemorrhage, Barbara forced Paul to transfer the home at 134 Bayshore Rd out of the recently created realty trust and convey it back to himself and Barbara as joint tenants. J. Timothy Nealon also prepared the documents for this transfer.
36. Barbara also forced Paul to place her on his bank and financial accounts.
37. These properties would have been included in Paul's estate, absent the tortious conduct of the defendants.
38. Because of defendants' tortious conduct, plaintiffs were injured and suffered damages.
39. Absent the tortious conduct of defendants, plaintiffs would have received more from their father's estate.

COUNT II

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(Defendants Barbara Botello, Joan Botello, Jean Ethridge Mandy Russell, Stephen Botello, J. Timothy Nealon and Nealon and Nealon, and Michael Fee)

40. Plaintiffs' incorporate paragraphs 1-40 as if stated here in their entirety.
41. While plaintiffs' father was recovering from a massive stroke and suffering from diminished cognitive abilities, defendants intentionally or with knowledge or reason to know that their conduct would cause emotional distress, caused the plaintiffs' extreme emotional distress by falsely and fraudulently representing to plaintiffs' father that his children were going to steal all of his money and put him in a nursing home.
42. From the day of Paul Botello's stroke until his death, defendants reinforced this falsehood and omitted the truth from Paul while alienating Paul from his other children.
43. Plaintiffs did not discover this until 2014 when Patti Botello informed them of the scheme. At this time, Paul Botello was in the throes of dementia.
44. Plaintiffs' have had to try and explain to their children why their grandfather died alone in a nursing home and why he had appeared so distant from his children over the years.
45. Plaintiffs never got to say goodbye to their father, who died thinking that his children wanted to steal all of his money, take his lumberyard, and keep him in a nursing home.
46. Defendants' conduct including but not limited to the conduct as described above was extreme and outrageous, beyond all possible bounds of decency, and utterly intolerable in a civilized community.
47. Defendant's conduct caused the plaintiffs severe emotional stress of a nature that no reasonable person could be expected to endure.



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48. As a direct and proximate result of the conduct of the defendants, the plaintiffs have suffered physical and emotional injuries, and other actual, consequential, and incidental damages.

Count III

CIVIL CONSPIRACY

49. Plaintiffs incorporate and re-allege paragraphs 1-48 as if stated here in their entirety.
50. At all times relevant to this complaint, Attorney J. Timothy Nealon and the law firm Nealon and Nealon had an attorney-client relationship with Paul Botello, Botello Lumber Company and its affiliates, and the defendants.
51. In 2011, Stephen Botello was litigating a contentious divorce from his then wife, Ellen Botello.
52. In anticipation of the divorce, Stephen, with the help of J. Timothy Nealon and Michael C. Fee, worked together to fraudulently devalue Steve's assets and transfer his shares of the lumber yard back to Paul Botello.
53. Additionally, the defendants convinced Paul that the only way to protect the lumberyard from Ellen Botello, was to execute a new estate plan which disinherited his children.
54. On or about March 31st, 2011, a Vaughan affidavit was drafted by Michael C. Fee and produced by Paul Botello to Ellen Botello which listed the new estate plan and Steven's fraudulently devalued and diluted assets.
55. The new estate plan also required the plaintiffs to transfer their interests in the BLFLP, without compensation, to the trustee of the newly created 2011 Paul Botello Revocable Trust upon Paul's death.
56. On April 1st, 2011, the new estate plan was allegedly formally executed at the office of Nealon and Nealon.



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57. These transfers and the new estate plan were done to defraud Ellen Botello and had the effect of disinheriting the plaintiffs.
58. In the alternative, the defendants knowingly and intentionally conspired to defraud the plaintiffs for their own benefits.
59. After Steve's divorce from Ellen was finalized, J. Timothy Nealon and Michael Fee facilitated the transfer of Steven's shares back from Paul to Steve when Paul's dementia worsened.
60. Jean Ethridge was aware and helped facilitate and perpetuate this scheme by executing documents for Botello Lumber and its affiliated entities, as well as convincing Paul Botello to participate in the conspiracy.
61. The facts alleged giving rise to the conspiracy were not known by plaintiffs until at least June of 2016 when they were disclosed through discovery in the now pending will contest between some of the defendants.
62. Because of the defendants' conduct and conspiracy, the plaintiffs' suffered harm and damages.

COUNT IV

BREACH OF FIDUCIARY DUTY

(Stephen Botello, Michael Fee, Tim Nealon)

63. Plaintiffs incorporate and re-allege paragraphs 1-62 as if stated here in their entirety.
64. In 1999, J. Timothy Nealon organized the Botello Lumberman's Family Limited Partnership (BLFLP) to hold the real estate for Botello Lumber Company.
65. The plaintiffs and Steven Botello are all limited partners of the BLFLP and as partners, they owed each other a fiduciary duty.



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66. No written partnership agreement was ever executed between the partners.
67. J. Timothy Nealon and Michael C. Fee were the attorneys for Botello Lumber Corp., BLFLP and owed plaintiffs a fiduciary duty.
68. Attorney Nealon facilitated certificates of transfer from Paul to the plaintiffs as limited partners of BLFLP from the years 1999 until 2003.
69. At all times relevant to this count, J. Timothy Nealon also represented Barbara Botello, Stephen Botello, Botello Lumber and its affiliated entities, and Paul Botello, but not the plaintiffs.
70. Attorney Nealon drafted the new fraudulent estate plan which created the 2011 Revocable Trust which required plaintiffs to give back their already vested partnership interests in the BLFLP to the 2011 Trust or plaintiffs would lose their contingent interest in the trust property. Michael Fee participated in this scheme while owing a fiduciary duty to the plaintiffs as limited partners' of BLFLP.
71. However, the 2011 Trust specifically did not require Stephen Botello to give back his partnership interest in BLFLP.
72. The 2011 Trust gives absolute discretion to the trustees to distribute the trust property as they saw fit and named Barbara Botello and Tim Nealon as co-trustees once Paul died.
73. The defendant's attempted and aided and abetted a "freeze out" of plaintiffs' interest in the Botello Company entities.
74. Plaintiffs did not discover the facts giving rise to this count until after Paul Botello died on April 13th, 2016 and the new estate plan was produced as part of discovery.
75. Defendants intentionally concealed the new estate plan from the plaintiffs so that they would not question Paul Botello about it while he was alive and of sound mind.



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76. The defendants have violated their duty to plaintiffs and plaintiffs have been damaged thereby.

COUNT V

Consumer Protection Act

(J. Timothy Nealon, Nealon and Nealon, Michael Fee)

77. Plaintiffs now re-allege each and every allegation as set forth above, and hereby incorporates same by reference, as if all were set forth fully herein. Substance prevails over form.

78. At all times relevant to this complaint, the defendants were attorneys engaged in the business and practice of law in the Commonwealth.

79. At least 30 days prior to the filing of this complaint Plaintiffs, through counsel, sent Defendants a written demand for relief by sending Defendants a demand letter as required by c. 93A §9.

80. The unfair, deceptive and unlawful acts or practices relied upon are that the defendants, their agents, and employees, intentionally interfered with plaintiffs' expected inheritance from their father Paul Botello, intentionally and fraudulently conspired to interfere with their expected inheritance, breached their fiduciary duty them, attempted to and continue to fraudulently induce them to assign their limited partnership interests to Stephen Botello and Barbara Botello through the estate of Paul Botello, and participated in a conspiracy to alienate Paul Botello from plaintiffs in order to benefit financially as well as cause them extreme emotional distress.

81. All of these acts were willful and knowing violations of M.G.L.A. chapter 93A, Section 2, and of the Rules and Regulations of the Attorney General issued thereunder.



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82. Defendants have responded to Plaintiffs' demand letter. Defendant's failure to grant relief upon demand was in bad faith with reason to know that the acts complained of were in violation of c. 93A §2.

83. As a result of the unfair and deceptive acts, plaintiffs were damaged.

COUNT VI

Conduct and Participation in a RICO *Enterprise* through a *Pattern of Racketeering Activity*:
18 U.S.C. §§ [1961\(5\)](#), [1962\(c\)](#)

84. Plaintiff now re-alleges each and every allegation as set forth above, and hereby incorporates same by reference, as if all were set forth fully herein. Substance prevails over form.

85. At various times and places partially enumerated in Plaintiff's *documentary material*, all Defendants did associate with a RICO *enterprise* of individuals who were associated in fact and who engaged in, and whose activities did affect, interstate and foreign commerce.

86. Likewise, all Defendants did conduct and/or participate, either directly or indirectly, in the conduct of the affairs of said RICO *enterprise* through a *pattern of racketeering activity*, all in violation of 18 U.S.C. §§ [1961\(4\)](#), (5), (9), and [1962\(c\)](#).

87. During the ten (10) calendar years preceding April 14, 2016 *A.D.*, all Defendants did cooperate jointly and severally in the commission of two (2) or more of the RICO predicate acts that are itemized in the RICO laws at 18 U.S.C. §§ [1961\(1\)\(A\)](#) and (B), and did so in violation of the RICO law at [18 U.S.C. 1962\(c\)](#) (Prohibited activities).

88. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also in violation of the RICO law at [18 U.S.C. 1962\(c\)](#) *supra*.



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COUNT VII

Conspiracy to Engage in a *Pattern of Racketeering Activity*: 18 U.S.C. §§ 1961(5), 1962(d)

89. Plaintiff now re-alleges each and every allegation as set forth above, and hereby incorporates same by reference, as if all were set forth fully herein. Substance prevails over form.
90. At various times and places partially enumerated in Plaintiff's *documentary material*, all Defendants did conspire to acquire and maintain an interest in a RICO *enterprise* engaged in a *pattern of racketeering activity*, in violation of 18 U.S.C. §§ 1962(b) and (d).
91. At various times and places partially enumerated in Plaintiff's *documentary material*, all Defendants did also conspire to conduct and participate in said RICO *enterprise* through a *pattern of racketeering activity*, in violation of 18 U.S.C. §§ 1962(c) and (d).
92. See also 18 U.S.C. §§ 1961(4), (5) and (9).
93. During the ten (10) calendar years preceding April 14, 2016 *A.D.*, all Defendants did cooperate jointly and severally in the commission of two (2) or more of the predicate acts that are itemized at 18 U.S.C. §§ 1961(1)(A) and (B), in violation of 18 U.S.C. 1962(d).
94. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also in violation of 18 U.S.C. 1962(d) (Prohibited activities *supra*).

Prayer for Relief

WHEREFORE, the plaintiffs, Susan Botello and Christopher Botello, request that this Honorable Court:

- Enter judgment in law and equity in favor of plaintiffs and against the defendants;



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- Award damages to the plaintiffs in an amount determined at trial;
- Place all real property wrongfully held by defendants in a constructive trust for benefit of plaintiffs;
- Award interest, costs, treble damages and attorney fees to the plaintiffs; and
- Award such other relief as this Honorable Court deems just and proper.

Plaintiffs request a trial by jury on all Counts.

Respectfully submitted,

Susan Botello and Christopher Botello,

By their attorney,

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